

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KIVON SCOTT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AMERICOR FUNDING, LLC d/b/a
AMERICOR FINANCIAL,

Defendant.

Civil Action No.
1:23-cv-02457-VMC

ORDER

Before the Court is Plaintiff's Notice of Voluntary Dismissal with Prejudice ("Notice," Doc. 42), filed on April 30, 2024. This case was filed on June 1, 2023. Defendant filed an Answer on February 1, 2024. (Doc. 39).

Federal Rule of Civil Procedure 41(a)(1)(A) provides that a Plaintiff may voluntarily dismiss a civil action without a court order in two circumstances: (i) by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment;" or (ii) by filing "a stipulation of dismissal signed by all parties who have appeared."

Because Defendant has filed an Answer, Plaintiff could not dismiss this case voluntarily by notice. Plaintiff should have either filed a stipulation of dismissal signed by all parties or sought leave to dismiss the case by Court order.

However, because Plaintiff has put “the substance of [his] position” before the Court, and in the interest of “secur[ing] the just, speedy, and inexpensive determination of every action and proceeding,” the Court will construe the Notice as a motion for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(2), which the Court will grant. *See Title Max v. Northington (In re Northington)*, 876 F.3d 1302, 1308 (11th Cir. 2017); Fed. R. Civ. P. 1. Accordingly, it is

ORDERED that Plaintiff’s Notice of Voluntary Dismissal with Prejudice (“Notice,” Doc. 42), **CONSTRUED** as a Motion for Voluntary Dismissal with Prejudice, is **GRANTED**. It is further

ORDERED that this civil action is **DISMISSED WITH PREJUDICE**, as to Plaintiff Kivon Scott, subject to the right of Defendant to object to dismissal within fourteen (14) days of the date of entry of this Order. If Defendant timely objects, the Court will set aside this Order and reopen the case. Should Defendant fail to object within that time, this case will stand as dismissed.

The Clerk is directed to close this case.

SO ORDERED this 30th day of April, 2024.



Victoria Marie Calvert
United States District Judge